IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE FIRST DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION NO : 16096 of 2004

Between:

M.Ramanjaneyulu, s/o M.Narshimloo,
Employee No.16896, Kalher Telephone Exchange, Under the control of Office of BSNL, Medak District, r/o Kalher, Medak District.

..... PETITIONER

AND

1 The General Manager, Telecom District, BSNL,
Sangareddy, Medak District.
2 The Sub.Divisional Officer (Telecom), BSNL, Kalher, Medak District

.....RESPONDENTS.

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an appropriate writ more particularly one in the nature of writ of mandamus, declaring the action on the part of the respondents in reducing the pay of the petitioner from Rs.5620/- to Rs.3880/- as arbitrary, illegal and unjust and consequently direct the respondents to restore the basic pay of the petitioner as Rs.5620/- and accordingly pay him all other allowances on the basis of the said basic pay.

Counsel for the Petitioner: MR.M.V.KRISHNA MOHAN

Counsel for the Respondents: Mr. T. Hanumantha Reddy

The Court at the admission stage made the following :

The Hon'ble Sri Justice

K.C. Bhanu

W.P. No. 16096 of 2004

O R D E R:

This writ petition is filed seeking to declare the action of the respondents in reducing the pay of the petitioner from Rs.5620/- to Rs.3880/- as arbitrary and illegal and to restore the basic pay of the petitioner at Rs.5620/-.

The brief facts that are necessary for the disposal of the present writ petition may be stated as follows:

The petitioner was initially appointed as Telephone Mechanic in the respondents' organization and has been working as such for the last 5 years. The Department of Telecommunications ('DOT' for short) earlier was under the direct control of the Government of India under the Ministry of Communications. In the year 2000 it has been converted into Bharat Sanchar Nigam Limited Corporation ('BSNL' for short) with effect from 1.10.2000. After conversion of DOT into BSNL, the employees working in the DOT were asked to submit the option for absorption into BSNL. In response to the same, the petitioner submitted his option on 31.1.2001 for absorption in BSNL w.e.f. 1.10.2000. His option was accepted and thereafter he is being treated as an employee of BSNL for all purposes. Prior to his conversion to the department of BSNL, his basic pay was Rs.3,540/-. After switching over to BSNL, his basic pay has been revised and fixed at Rs.5620/- w.e.f. 1.10.2000. The respondents have recalculated his basic pay and have paid the arrears w.e.f. 1.10.2000 treating his basic pay at Rs.5620/-. The respondents have been paying the salary on the basis of revised basic pay i.e. Rs.5620/- right from 1.10.2000. However, to his surprise and shock, the respondents without issuing any notice or memo have all of a sudden reduced his basic pay to Rs.3880/- from

Rs.5620/- w.e.f. May,2004. The petitioner was unnecessarily punished for no fault on his part due to the sudden reduction of basic pay. Hence the present writ petition.

The respondents filed counter affidavit admitting that the petitioner is working as Telephone Mechanic in DOT which was subsequently converted into BSNL w.e.f. 1.10.2000. The Government of India, DOT vide its orders dated 30.09.2000 transferred assets and liabilities and also the entire establishment (Officers, Staff, employees and industrial workers) to the newly formed company, namely, BSNL along with their posts on existing terms and conditions on 'as is where is' basis, on deemed deputation w.e.f. 1.10.2000. The process of absorption of employees into BSNL was regulated by the instructions contained in BSNL Lr.No.BSNL/4/SR/2000 dated 2.1.2001. The petitioner worked in the erstwhile Telecom Department since 27.7.1992 and has been promoted w.e.f. 16.9.1996. He along with other staff has exercised his option to be absorbed into BSNL, but by that time there was a criminal case pending against him and therefore he was not absorbed into BSNL in accordance with the instructions contained in the proceedings dated 2.1.2001. While drawing the arrears of all others, the pay of the petitioner was fixed in IDA scale and arrears were drawn erroneously though Presidential Order for his absorption was not issued to him. The fact that the pay of the petitioner was wrongly revised was noticed and the same was informed to the petitioner vide letter dated 24.3.2004. The petitioner was not given 'Presidential Order' for absorption into BSNL so far, as such he is not eligible for IDA pay scale. Therefore, the respondents pray to dismiss the writ petition.

Learned counsel for the petitioner contended that without any notice and without giving any opportunity to the petitioner the pay has been reduced, thereby violating the principles of natural justice. Hence the reduction of basic pay of the petitioner is illegal and arbitrary.

On the other hand, the learned counsel for the respondents contended that the pay of the petitioner has been erroneously revised and the same was noticed and was duly informed vide letter dated 24.3.2004 and if the petitioner is aggrieved, he has to challenge the said proceedings and so far the petitioner has not been given the Presidential Order for absorption into BSNL and therefore the petitioner is not entitled for IDA pay scale and the writ petition deserves to be dismissed.

It is not in dispute that the petitioner was appointed as Telephone Mechanic in the Department of Telecommunications, which was under the direct control of Government of India, Ministry of Communications. After creation of BSNL, the DOT vide its orders dated 30.9.2000 transferred assets and liabilities and also the entire establishment (officers, staff, employees and industrial workers) to the newly formed company, namely, BSNL along with their posts on existing terms and conditions. The process of absorption of the employees into BSNL was regulated by the instructions contained in BSNL letter dated 2.1.2001. According to the respondents, as a criminal case in C.C. 10 of 2001 was pending against the petitioner, he was not absorbed into BSNL. The same is not denied or disputed by filing reply affidavit, but the learned counsel for the petitioner filed a copy of the judgment of the Special Judge for CBI cases in C.C.10 of 2001 wherein the petitioner was acquitted. It is not known at this stage whether the complainant – C.B.I., preferred any revision or appeal against the said judgment before the higher authorities. Be that as it may, the fact remains that the petitioner is not given the Presidential Order for absorption into BSNL, so far.

It is also not disputed before this court that while the petitioner was drawing the salary with basic pay of Rs.5620/- till May 2004, the same is shown as Rs.3880/- from June, 2004 onwards. According to the respondents, the pay of the petitioner was wrongly revised since the arrears were drawn erroneously along with the other staff though he is not eligible. After noticing the same, the petitioner was duly informed about it vide letter dated 24.3.2004. The

said proceedings has not been challenged. As per the proceedings of the respondent-BSNL dated 2.1.2001, it was agreed that the employees with on-going disciplinary cases can also opt for absorption in BSNL, but their absorption will be subject to the outcome of the vigilance case. Their pending cases will be expedited on a fast track mode by DOT. The appeal/petition cases for these employees will also be decided by DOT authorities.

Therefore, the petitioner prima facie is not entitled for IDA pay scale. Till he is absorbed into BSNL, he is not entitled for IDA scale but his scale has been fixed in IDA scale erroneously and arrears were drawn. On coming to know about the same, the petitioner was duly informed by proceedings dated 24.3.2004. If the petitioner is aggrieved, he can make a representation to the respondents in pursuance of the said proceedings. So, prima facie, the petitioner fails to establish that his pay was rightly fixed at Rs.5620/- in accordance with the Rules governing the service conditions of the employees of the respondent-BSNL. Reducing the pay of the petitioner from Rs.5620/- to Rs.3880/- cannot be said to be arbitrary or illegal.

Hence, the writ petition is disposed of with a direction to the petitioner to approach the respondents to submit his grievance, if any, and thereafter the respondents shall take appropriate decision on the representation of the petitioner in accordance with law. No costs.

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K.C. Bhanu, J.

Date: --02—2005.

MVB.

..... REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1 **The General Manager, Telecom District, BSNL,**
Sangareddy, Medak District.
2 **The Sub.Divisional Officer (Telecom), BSNL, Kalher, Medak District**

3. 2CD copies.